may testify to the general practice of masters with reference to similar appliances and the comparative safety of different appliances; but it is not competent to show that the appliances of another master are better than those used by the master whose conduct is being called in question.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 920-925.]

3. Evidence—Hearsay—Recitals in Papers.—A blue print showing a kind of water gauge, which has indorsed thereon a recital as to the use of the guage by certain companies, and a paper illustrating another gauge and containing a manufacturer's statement detailing the advantages of the gauge, are hearsay on the issue of alleged negligence in failing to use gauges similar to those described.

4. Master and Servant—Actions—Instructions—Sufficiency of Evidence.—In an action against a railroad for injuries to a fireman, there was evidence that defendant had placed a man on the engine to learn how to fire; that, while he was engaged in that work, plaintiff was on the engineer's side of the cab, running the engine in the presence of the engineer; that the engineer was required to instruct the fireman in his duties and to be present when the fireman was running the engine; and that the fireman was required to obey the orders of the engineer. Held, that the evidence authorized a charge that, if plaintiff, as one of the inducements to his employment, was permitted to run the engine so as to learn to be an engineer, it was the duty of defendant to use ordinary care to provide and maintain a reasonably safe place in which plaintiff was to perform such work.

5. Trial — Instructions — Applicability to Evidence.—Instructions should state, not abstract propositions of law, but the law as applicable to the particular facts of the case.

STANDARD OIL CO. *v.* CITY OF FREDERICKSBURG.

March 1, 1906.

[52 S. E. 817.]

1. Licenses—Power to Tax—Constitutional Provisions.—Const. § 117 [Va. Code 1904, p. ccxxxviii], amending existing charters of cities so as to conform to the Constitution; section 168 [p. cclxii], providing that taxes shall be levied and collected under general laws; and section 170, providing that the general assembly may levy license and franchise taxes—do not repeal previously existing special charters of cities which authorize them to levy license taxes, nor require such taxes to be levied solely under a general law.

[Ed. Note.—For cases in point, see vol. 32, Cent. Dig. Licenses, §§ 5, 6.]

2. Commerce—Interstate Commerce—What Constitutes.—A cor-

poration engaged in the sale of oil, which brings its oil from a foreign state into this state, and mingles it with the general mass of property in the state, is not in selling oil in the state, either in original barrels or from wagons, engaged in interstate commerce in such sense as to preclude a city of the state from exacting a license tax from it.

3. Municipal Corporations—Taxing Powers—Statutory Provisions.—Neither Code 1887, § 1042 [Va. Code 1904, p. 504], authorizing cities and towns to impose a license tax in addition to the state tax, nor Acts March 23, 1871 (Acts 1870-71 p. 267, c. 187, § 7), authorizing the town of Fredericksburg to require a town license for anything for which a state license may be required, repeals Act March 5, 1821 (Acts 1820-21, p. 133, c. 114, § 7), authorizing the town of Fredericksburg to assess a tax on the inhabitants and on property within the actual limits of a town for the improvement, convenience, and well being of the town.

4. Licenses—Persons Taxable—Merchants.—An oil company engaged in the business of refining and distributing oil and selling it to local dealers from tank wagons, and not from a fixed place of business, is not a merchant as that term is generally understood, and cannot, by voluntarily paying a state license as a merchant, prevent the assessment of a specific tax against its business.

5. Licenses — Constitutional Requirements—Uniformity.—In order to sustain a tax under the test of uniformity, it must not lay greater burdens upon one person than are laid upon other persons in the same calling or condition, the tax imposed must be the same on all those in the same business, any difference therein must bear a just and proper relation to an attempted classification, and, in case of a municipal ordinance imposing license or business taxes, it must not discriminate against any business or class of business or against nonresidents or persons engaged in the sale of property produced or manufactured outside the municipality.

[Ed. Note.—For cases in point, see vol. 32, Cent. Dig. Licenses, §§ 8, 9.]

6. Same.—A municipal ordinance which imposes one license tax on corporations transporting oil to the state in bulk, in tank cars, or through pipes for the purpose of distributing the same in the city, and imposes a much smaller tax on persons who sell oil which has been transported to the city for distribution in barrels only, is discriminatory, and violates the constitutional requirement of uniformity.

[Ed. Note.—For cases in point, see vol. 32, Cent. Dig. Licenses, §§ 8, 9.]

7. Same.—A municipal ordinance which imposes a license tax on any person selling oil to merchants in the city, but provides that it shall only apply to a person or corporation producing or manufacturing the oil which it sells, or to a person or corporation who

stores oil in stationary tanks and transports the same by tank wagons or in barrels through the streets of the city for the purposes of distribution or delivery to purchasers, is reasonable in its classification of the persons and corporations taxable thereunder, and does not violate the constitutional requirements of uniformity and against discrimination.

[Ed. Note.—For cases in point, see vol. 32, Cent. Dig. Licenses, §§ 8, 9.]

MARBACH *v.* HOLMES.

March 1, 1906.

[52 S. E. 828.]

1. Ejectment — Evidence — Title. — Where both parties in ejectment claim the land from a common source, it is unnecessary for either to trace title beyond that source.

2. Adverse Possession—Possession of Purchaser—Disavowal of Vendor's Title.—The possession of a purchaser under an incompleted contract of sale does not become adverse until there is a severance of the relation of vendor and purchaser by a distinct avowal on the purchaser's part that he is holding adversely to the vendor, and notice of such avowal is brought home to the vendor.

[Ed. Note.—For cases in point, see vol. 1, Cent. Dig. Adverse Possession, §§ 343-346.]

3. Ejectment—Adverse Possession—Evidence.—In ejectment, where the defense was adverse possession, the record of a suit for specific performance brought three years before the commencement of the ejectment action by defendant against his alleged vendor, under whom plaintiff claimed, in which suit the bill was dismissed, was admissible to show that defendant's possession was not adverse at that time.

SMOKELESS FUEL CO. *v.* W. E. SEATON & SONS.

March 1, 1906.

[52 S. E. 829.]

1. Contracts—Consideration—Mutual Promises.—Where the consideration for the promise of one party is the promise of the other party, there must be absolute mutality of engagement, so that each party may have the right to hold the other to a positive agreement.

[Ed. Note.—For cases in point, see vol. 11, Cent. Dig. Contracts, § 345.]

2. Sales—Consideration—Mutuality.—A contract reciting that the first party had sold to the second party from 1,000 to 1,500 tons of coal at a certain price, to be shipped as ordered between the date of